

COSMETOLOGIST/BARBER, ESTHETICIAN, ELECTROLOGIST AND NAIL TECHNICIAN LICENSING ACT

Part 1 - General Provisions

58-11a-101. Title.

This chapter is known as the "Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act."

58-11a-102. Definitions.

- (1) "Approved cosmetologist/barber apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(1) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- (2) "Approved esthetician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(2) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- (3) "Approved master esthetician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(3) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- (4) "Approved nail technician apprenticeship" means an apprenticeship that meets the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- (5) "Board" means the Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board created in Section 58-11a-201.
- (6) "Cosmetologist/barber" means a person who is licensed under this chapter to engage in the practice of cosmetology/barbering.
- (7) "Cosmetologist/barber instructor" means a cosmetologist/barber who is licensed under this chapter to teach cosmetology/barbering at a licensed cosmetology/barber school.
- (8) "Direct supervision" means that the supervisor of an apprentice or the instructor of a student is immediately available for consultation, advice, instruction, and evaluation.
- (9) "Electrologist" means a person who is licensed under this chapter to engage in the practice of electrology.
- (10) "Electrologist instructor" means an electrologist who is licensed under this chapter to teach electrology at a licensed electrology school.
- (11) "Esthetician" means a person who is licensed under this chapter to engage in the practice of esthetics.
- (12) "Esthetician instructor" means a master esthetician who is licensed under this chapter to teach the practice of esthetics and the practice of master-level esthetics at a licensed esthetics school.
- (13) "Fund" means the Cosmetologist/Barber, Esthetician, Electrology, and Nail Technician Education and Enforcement Fund created in Section 58-11a-103.
- (14) "Licensed cosmetology/barber school" means a cosmetology/barber school licensed under this chapter.
- (15) "Licensed electrology school" means an electrology school licensed under this chapter.
- (16) "Licensed esthetics school" means an esthetics school licensed under this chapter.
- (17) "Licensed nail technician school" means a nail technology school licensed under this chapter.
- (18) "Master esthetician" means an individual who is licensed under this chapter to engage in the practice of master-level esthetics.
- (19) "Nail technician" means an individual who is licensed under this chapter to engage in the practice of nail technology.
- (20) "Nail technician instructor" means a nail technician licensed under this chapter to teach the practice of nail technology in a licensed nail technology school.
- (21) (a) "Practice of cosmetology/barbering" means:

- (i) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;
 - (ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or other appliances;
 - (iii) arching eyebrows, or tinting eyebrows or eyelashes, or both;
 - (iv) removing hair from the face, neck, shoulders, arms, back, bikini line, or legs of a person by the use of depilatories, waxing, or shaving equipment;
 - (v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces or both on the human head; or
 - (vi) practicing hair weaving or hair fusing or servicing previously medically implanted hair.
- (b) The term "practice of cosmetology/barbering includes:
 - (i) the practice of esthetics; and
 - (ii) the practice of nail technology.
- (22) "Practice of cosmetology/barbering instruction" means instructing cosmetology/barbering in a licensed cosmetology/barber school.
- (23) "Practice of electrolysis" means the removal of superfluous hair from the body of a person by the use of electricity.
- (24) "Practice of electrolysis instruction" means instructing electrolysis in a licensed electrolysis school.
- (25) "Practice of esthetics" means any one of the following skin care procedures done on the head, face, neck, torso, abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:
 - (a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, extraction, depilatories, waxes, tweezing, natural nail manicures or pedicures, or callous removal by buffing or filing;
 - (b) manual lymphatic massage of the face and neck;
 - (c) limited chemical exfoliation as defined by rule;
 - (d) removing superfluous hair by means other than electrolysis or laser procedures; or
 - (e) other esthetic preparations or procedures with the use of the hands, a high-frequency or galvanic electrical apparatus, or a heat lamp for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of medical, physical, or mental ailments.
- (26) "Practice of esthetics instruction" means instructing esthetics or master-level esthetics in a licensed esthetics school.
- (27) (a) "Practice of master-level esthetics" means:
 - (i) any of the following when done for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:
 - (A) body wraps as defined by rule;
 - (B) hydrotherapy as defined by rule;
 - (C) chemical exfoliation as defined by rule;
 - (D) advanced pedicures as defined by rule;
 - (E) sanding, including microdermabrasion; or
 - (F) other esthetic preparations or procedures with the use of
 - (I) the hands; or
 - (II) a mechanical or electrical apparatus which is approved for use by division rule for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; and
 - (ii) lymphatic massage by manual or other means.
- (b) Notwithstanding the provisions of Subsection (27)(a), a master-level esthetician may perform procedures listed in Subsection (27)(a)(i) for noncosmetic purposes if done under the supervision of a licensed health care practitioner acting within the scope of his or her license.
- (c) The term "practice of master-level esthetics" includes the practice of esthetics.

- (28) "Practice of nail technology" means to cut, clean, manicure, shape, massage, or enhance the appearance of the nails of the hands or feet of an individual including the application and removal of sculptured or artificial nails.
- (29) "Practice of nail technology instruction" means instructing nail technology in a licensed nail technician school.
- (30) "Recognized cosmetology/barber school" means a cosmetology/barber school located in another state, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
- (31) "Recognized electrology school" means an electrology school located in another state, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
- (32) "Recognized esthetics school" means an esthetics school located in another state, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
- (33) "Recognized nail technology school" means a nail technology school in another state, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.
- (34) "Salon" means a place, shop, or establishment in which cosmetology/barber, esthetics, electrology, or nail technology is practiced.
- (35) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.
- (36) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501 and as may be further defined by rule by the division in collaboration with the board in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

58-11a-103. Education and enforcement fund.

- (1) There is created a restricted special revenue fund known as the "Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund."
- (2) The fund consists of monies from administrative penalties collected pursuant to this chapter.
- (3) The fund shall earn interest and all interest earned on fund monies shall be deposited into the fund.
- (4) The director may, with the concurrence of the board, make distributions from the fund for the following purposes:
 - (a) education and training of licensees under this chapter;
 - (b) education and training of the public or other interested persons in matters concerning the laws governing the practices licensed under this chapter; and
 - (c) enforcement of this chapter by:
 - (i) investigating unprofessional or unlawful conduct; and
 - (ii) providing legal representation to the division when the division takes legal action against a person engaging in unprofessional or unlawful conduct.
- (5) The division shall report annually to the appropriate appropriations subcommittee of the Legislature concerning the fund.

Part 2 - Board

58-11a-201. Board.

- (1) There is created the Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology Licensing Board consisting of:
 - (a) one cosmetologists/barber;
 - (b) (i) one cosmetologist/barber instructor; or
(ii) one representative of a licensed cosmetology/barber school;
 - (c) one master esthetician;
 - (d) (i) one esthetician instructor; or
(ii) one representative of a licensed esthetics school;
 - (e) one nail technician;
 - (f) (i) one nail technician instructor; or
(ii) one representative of a licensed nail technician school;
 - (g) one electrologist; and

- (h) two members from the general public.
- (2) (a) The board shall be appointed and serve in accordance with Section 58-1-201.
- (b) (i) At least one of the members of the board appointed under Subsections (1)(b), (d), and (f) shall be an instructor at or a representative of a public school.
- (ii) At least one of the members of the board appointed under Subsections (1)(b), (d), and (f) shall be an instructor at or a representative of a private school.
- (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:
 - (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (b) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Part 3 - Licensing

58-11a-301. Licensure required - License classifications.

- (1) Except as specifically provided in Section 58-1-307 or 58-11a-304, a license is required to:
 - (a) engage in the practice of:
 - (i) cosmetology/ barbering;
 - (ii) cosmetology/barbering instruction; or
 - (iii) electrology; or
 - (b) operate a cosmetology/barbering school.
- (2) Beginning October 1, 2001, except as specifically provided in Section 58-1-307 or 58-11-304, a license is required to:
 - (a) engage in the practice of:
 - (i) electrology instruction;
 - (ii) esthetics;
 - (iii) master-level esthetics;
 - (iv) esthetics instruction;
 - (v) nail technology; or
 - (vi) nail technology instruction; or
 - (b) operate:
 - (i) an electrology school;
 - (ii) an esthetics school; or
 - (iii) a nail technology school.
- (3) The division shall issue to a person who qualifies under this chapter a license in the following classifications:
 - (a) cosmetologist/barber;
 - (b) cosmetologist/barber instructor;
 - (c) cosmetology/barber school;
 - (d) electrologist;
 - (e) electrology instructor;
 - (f) electrology school;
 - (g) esthetician;
 - (h) master esthetician;
 - (i) esthetician instructor;
 - (j) esthetics school;
 - (k) nail technology
 - (l) nail technology instructor; and
 - (m) nail technology school.

58-11a-302. Qualifications for licensure.

- (1) Each applicant for licensure as a cosmetologist/barber shall:
 - (a) submit an application in a form prescribed by the division;

- (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) be of good moral character;
 - (d) provide satisfactory documentation of:
 - (i) graduation from a licensed or recognized cosmetology/barber school whose curriculum consists of a minimum of 2,000 hours of instruction or the equivalent number of credit hours over a period of not less than 12 months;
 - (ii) (A) having graduated from a recognized cosmetology/barber school whose curriculum consists of less than 2,000 hours of instruction or the equivalent number of credit hours; and
(B) having practiced as a licensed cosmetologist/barber for a period of not less than 4,000 hours; or
 - (iii) having completed an approved cosmetology/barber apprenticeship; and
 - (e) meet the examination requirement established by rule.
- (2) Each applicant for licensure as a cosmetologist/barber instructor shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) provide satisfactory documentation that the applicant is currently licensed as a cosmetologist/barber;
 - (d) be of good moral character;
 - (e) provide satisfactory documentation of completion of:
 - (i) an instructor training program conducted by a cosmetology/barber school consisting of a minimum of 1,000 hours or the equivalent number of credit hours; or
 - (ii) a minimum of 4,000 hours of experience as a cosmetologist/barber; and
 - (f) meet the examination requirement established by rule.
- (3) Each applicant for licensure as a cosmetologist/barber school shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2; and
 - (c) provide satisfactory documentation:
 - (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - (ii) of business licensure from the city, town, or county in which the school is located;
 - (iii) that the applicant's physical facilities comply with the requirements established by rule; and
 - (iv) that the applicant meets the standards for cosmetology/barber schools, including staff and accreditation requirements, established by rule.
- (4) Each applicant for licensure as an electrologist shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) be of good moral character;
 - (d) provide satisfactory documentation of having graduated from a licensed or recognized electrology school after completing a curriculum of 500 hours of instruction or the equivalent number of credit hours; and
 - (e) meet the examination requirement established by rule.
- (5) Each applicant for licensure as an electrologist instructor shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) provide satisfactory documentation that the applicant is currently licensed as an electrologist;
 - (d) be of good moral character;
 - (e) provide satisfactory documentation of completion of:
 - (i) an instructor training program conducted by an electrology school consisting of a minimum of 175 hours or the equivalent number of credit hours; or
 - (ii) a minimum of 1,000 hours of experience as an electrologist; and
 - (f) meet the examination requirement established by rule.
- (6) Each applicant for licensure as an electrologist school shall:
- (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2; and

- (c) provide satisfactory documentation:
 - (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - (ii) of business licensure from the city, town, or county in which the school is located;
 - (iii) that the applicant's facilities comply with the requirements established by rule; and
 - (iv) that the applicant meets the standards for electrologist schools, including staff, curriculum, and accreditation requirements, established by rule.
- (7) Each applicant for licensure as an esthetician shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) be of good moral character; and
 - (d) provide satisfactory documentation of one of the following:
 - (i) (A) graduation from a licensed or recognized esthetic school whose curriculum consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the equivalent number of credit hours; and
 - (B) having met the examination requirement established by division rule;
 - (ii) (A) completion of an approved esthetician apprenticeship; and
 - (B) having met the examination requirement established by division rule;
 - (iii) being engaged in the practice of esthetics prior to January 1, 2001, with a business license issued by the city, town, or county where the applicant was practicing esthetics;
 - (iv) being engaged in the practice of esthetics prior to January 1, 2001, as an employee of an employer who meets the requirements of Subsection (7)(d)(iii); or
 - (v) having met the examination requirement established by division rule prior to December 31, 2001.
- (8) Each applicant for licensure as a master esthetician shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) be of good moral character; and
 - (d) provide satisfactory documentation of one of the following:
 - (i) (A) completion of 1,200 hours of training or the equivalent number of credit hours, including 200 hours of training or the equivalent number of credit hours in lymphatic massage, at a licensed or recognized esthetics school; and
 - (B) having met the examination requirement established by division rule;
 - (ii) (A) completion of an approved master esthetician apprenticeship; and
 - (B) having met the examination requirement established by division rule;
 - (iii) being engaged in the practice of master-level esthetics prior to January 1, 2001, with a business license issued by the city, town, or county where the applicant was practicing esthetics;
 - (iv) being engaged in the practice of master-level esthetics prior to January 1, 2001, as an employee of an employer who meets the requirements of Subsection (8)(d)(iii); or
 - (v) having met the examination requirement established by division rule prior to December 31, 2001.
- (9) Each applicant for licensure as an esthetician instructor shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) provide satisfactory documentation that the applicant is currently licensed as a master esthetician;
 - (d) be of good moral character;
 - (e) provide satisfactory documentation of completion of:

- (i) an instructor training program conducted by a licensed or recognized esthetics school consisting of a minimum of 300 hours or the equivalent number or credit hours; or
 - (ii) a minimum of 1,000 hours of experience in esthetics; and
- (f) meet the examination requirement established by rule.
- (10) Each applicant for licensure as an esthetics school shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2; and
 - (c) provide satisfactory documentation:
 - (i) of appropriate registration with the Division of Corporations and Commercial Code;
 - (ii) of business licensure from the city, town, or county in which the school is located;
 - (iii) that the applicant's physical facilities comply with the requirements established by rule; and
 - (iv) that the applicant meets the standards for esthetics schools, including staff, curriculum, and accreditation requirements, established by division rule made in collaboration with the board.
- (11) Each applicant for licensure as a nail technician shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) be of good moral character; and
 - (d) provide satisfactory documentation of one of the following:
 - (i) (A) graduation from a licensed or recognized nail technology school whose curriculum consists of not less than 200 hours or the equivalent number of credit hours of not more than eight hours a day and six days a week during the program; and
 - (B) having met the examination requirement established by division rule;
 - (ii) (A) having completed an approved nail technician apprenticeship; and
 - (B) having met the examination requirement established by division rule;
 - (iii) being engaged in the practice of nail technology prior to January 1, 2001, with a business license issued by the city, town, or county where the applicant was practicing nail technology;
 - (iv) being engaged in the practice of nail technology prior to January 1, 2001, as an employee of an employer who meets the requirements of Subsection (11)(d)(iii); or
 - (v) having met the examination requirement established by division rule prior to December 31, 2001.
- (12) Each applicant for licensure as a nail technician instructor shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) provide satisfactory documentation that the applicant is currently licensed as a nail technician;
 - (d) be of good moral character;
 - (e) provide satisfactory documentation of completion of:
 - (i) an instructor training program conducted by a licensed or recognized nail technology school consisting of a minimum of 100 hours or the equivalent number of credit hours; or
 - (ii) a minimum of 400 hours of experience in nail technology; and
 - (f) meet the examination requirement established by rule.
- (13) Each applicant for licensure as a nail technology school shall:
 - (a) submit an application in a form prescribed by the division;
 - (b) pay a fee determined by the department under Section 63-38-3.2; and
 - (c) provide satisfactory documentation:
 - (i) of appropriate registration with the Division of Corporations and Commercial Code;

- (ii) of business licensure from the city, town, or county in which the school is located;
 - (iii) that the applicant's physical facilities comply with the requirements established by rule; and
 - (iv) that the applicant meets the standards for nail technology schools, including staff, curriculum, and accreditation requirements, established by rule.
- (14) Each applicant for licensure under this chapter whose education in the field for which a license is sought was completed at a foreign school may satisfy the educational requirements for licensure by demonstrating, to the satisfaction of the division, the educational equivalency of the foreign school education with a licensed school under this chapter.

58-11a-303. Terms of license - Expiration - Renewal.

- (1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule, except that an instructor license is a one-time certificate and does not expire unless the licensee fails to keep current the license that qualified the licensee to be an instructor under Section 58-11a-302.
- (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal, a licensed school shall show satisfactory evidence that the school meets the standards for that type of school, including staff, curriculum, and accreditation requirements, established by rule.
- (3) Each license expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.

58-11a-304. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology without being licensed under this chapter:

- (1) persons licensed under the laws of this state to engage in the practice of medicine, surgery, osteopathy, or chiropractic when engaged in the practice of the profession for which they are licensed;
- (2) commissioned physicians and surgeons serving in the armed forces of the United States or another federal agency;
- (3) registered nurses, undertakers, and morticians licensed under the laws of this state when engaged in the practice of the profession for which they are licensed;
- (4) persons who visit the state to engage in instructional seminars, advanced classes, trade shows, or competitions of a limited duration;
- (5) persons who engage in the practice of cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology without compensation;
- (6) persons instructing adult education classes and other educational programs directed toward persons who are not licensed under this chapter and that are not intended to train persons to become licensed under this chapter, provided:
 - (a) attendees receive no credit toward the educational requirement for licensure under this chapter; and
 - (b) (i) the instructor is properly licensed; or
 - (ii) the instructor receives no compensation;
- (7) persons instructing in workshops, seminars, training meetings, and other educational programs whose purpose is to provide continuing professional development to licensed cosmetologist/barbers, estheticians, master estheticians, nail technicians, or electrologists;
- (8) persons currently enrolled in a licensed cosmetology/barber school when participating in an on the job training internship under the direct supervision of a licensed cosmetologist/barber upon completion of a basic program under the standards established by rule by the division in collaboration with the board;
- (9) persons enrolled in an approved apprenticeship pursuant to Section 58-11-306; and

- (10) employees of a company which is primarily engaged in the business of selling products used in the practice of cosmetology/barbering, esthetics, master-level esthetics, electrology, or nail technology when demonstrating the company's products to potential customers.

58-11a-305. Requirement to display license.

Each licensee under this chapter shall prominently display the licensee's license at the location where the licensee engages in the practice for which that license is issued under this chapter.

58-11a-306. Cosmetologist/barber apprenticeship.

- (1) An approved cosmetologist/barber apprenticeship shall:
 - (a) consist of not less than 2,500 hours of training in not less than 15 months; and
 - (b) be conducted by a supervisor who:
 - (i) is licensed under this chapter as a cosmetologist/barber instructor; and
 - (ii) provides direct supervision of the cosmetologist/barber apprentice during the apprenticeship program.
- (2) An approved esthetician apprenticeship shall:
 - (a) consist of not less than 800 hours of training in not less than nine months; and
 - (b) be conducted by a supervisor who:
 - (i) is licensed under this chapter as an esthetician instructor; and
 - (ii) provides direct supervision of the esthetician apprentice during the apprenticeship program.
- (3) An approved master esthetician apprenticeship shall:
 - (a) consist of not less than 1,500 hours of training in not less than 18 months; and
 - (b) be conducted by a supervisor who:
 - (i) is licensed under this chapter as a master-level esthetician instructor; and
 - (ii) provides direct supervision of the master esthetician apprentice during the apprenticeship program.
- (4) An approved nail technician apprenticeship shall:
 - (a) consist of not less than 250 hours of training in not less than six months; and
 - (b) be conducted by a supervisor who:
 - (i) is licensed under this chapter as a nail technician instructor; and
 - (ii) provides direct supervision of the nail technician apprentice during the apprenticeship program.

Part 4 - License Denial and Discipline

58-11a-401. Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Part 5 - Unprofessional Conduct

58-11a-501. Unprofessional conduct.

Unprofessional conduct includes:

- (1) failing as a licensed school to obtain or maintain accreditation as required by rule;
- (2) failing as a licensed school to comply with the standards of accreditation applicable to such schools;

- (3) failing as a licensed school to provide adequate instruction to enrolled students;
- (4) failing as an apprentice supervisor to provide direct supervision to the apprentice;
- (5) failing as an instructor to provide direct supervision to students under their instruction;
- (6) failing as an apprentice supervisor to comply with division rules relating to apprenticeship programs under this chapter;
- (7) keeping a salon or school, its furnishing, tools, utensils, linen, or appliances in an unsanitary condition;
- (8) failing to comply with Title 26, Utah Health Code;
- (9) failing to display licenses or certificates as required under Section 58-11a-305;
- (10) failing to comply with physical facility requirements established by rule;
- (11) failing to maintain mechanical or electrical equipment in safe operating condition;
- (12) failing to adequately monitor patrons using steam rooms, dry heat rooms, baths, showers, or saunas;
- (13) prescribing or administering prescription drugs;
- (14) failing to comply with all applicable state and local health or sanitation laws;
- (15) engaging in any act or practice in a professional capacity that is outside the applicable scope of practice;
- (16) engaging in any act or practice in a professional capacity which the licensee is not competent to perform through education or training;
- (17) in connection with the use of a chemical exfoliant, unless under the supervision of a licensed health care practitioner acting within the scope of his or her license:
 - (a) using any acid, concentration of an acid, or combination of treatments which violates the standards established by rule;
 - (b) removing any layer of skin deeper than the stratum corneum of the epidermis; or
 - (c) using an exfoliant that contains phenol, TCA acid, or BCA acid;
- (18) in connection with the sanding of the skin, unless under the supervision of a licensed health care practitioner acting within the scope of his or her license, removing any layer of skin deeper than the stratum corneum of the epidermis; or
- (19) using as a cosmetologist/barber, esthetician, master esthetician, or nail technician any laser procedure or intense, pulsed light source.

58-11-502. Unlawful conduct.

Unlawful conduct includes:

- (1) practicing or engaging in, or attempting to practice or engage in activity for which a license is required under this chapter unless:
 - (a) the person holds the appropriate license under this chapter; or
 - (b) an exemption in Section 58-1-307 or 58-11a-304 applies;
- (2) knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession licensed under this chapter if the employee is not licensed to do so under this chapter or exempt from licensure; and
- (3) touching, or applying an instrument or device to the following areas of a client's body:
 - (a) the genitals or the anus; or
 - (b) the breast of a female patron, except in cases in which the female patron states to a licensee that the patron requests breast skin procedures and signs a written consent form, which must also include the signature of a parent or legal guardian if the patron is a minor, authorizing the licensee to perform breast skin procedures.

58-11-503. Penalties.

- (1) Unless Subsection (2) applies, an individual who commits an act of unlawful conduct under Section 58-11a-502 or who fails to comply with a citation issued under this section after it is final is guilty of a class A misdemeanor.
- (2) Sexual conduct that violates Section 58-11a-502 and Title 76, Criminal Code, shall be subject to the applicable penalties in Title 76.
- (3) Grounds for immediate suspension of a licensee's license by the division include the issuance of a citation for violation of Subsection 58-11a-502(1) or (2).
- (4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-11a-502(1) or (2) or any rule or order issued with respect to Subsection 58-11-502(1) or (2), and that disciplinary action is appropriate, the director or his designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.
 - (i) Any person who is in violation of the provisions of Subsection 58-11a-502(1) or (2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-11a-502(1) or (2).
 - (ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-11a-401 may not be assessed through a citation.
- (b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.
- (c) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.
- (d) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.
- (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.
- (f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
- (g) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
- (h) Fines shall be assessed by the director or his designee according to the following:
 - (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
 - (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000; and
 - (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.
- (i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:

- (A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-11a-502(1) or (2); or
- (B)
 - (I) the division initiated an action for a first or second offense;
 - (II) no final order has been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);
 - (III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-11a-502(1) or (2); and
 - (IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4)(i)(i)(B)(I).
- (ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.
- (5) Any penalty imposed by the director under Subsection (4)(h) shall be deposited into the Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund. Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.

COSMETOLOGIST/BARBER, ESTHETICIAN,
ELECTROLOGIST AND NAIL TECHNICIAN
LICENSING ACT

Title 58, Chapter 11a
Utah Code Annotated 1953
As Amended by
Session Laws of Utah 2002
Issued July 1, 2002